

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

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) MDL No. 1456  
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) Civil Action No. 01-12257-PBS  
)

THIS DOCUMENT RELATES TO:

) Judge Patti B. Saris  
)

*State of Arizona v. Abbott Labs, et al.*  
06-CV-11069-PBS

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**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S  
FIRST AMENDED COMPLAINT**

Pursuant to Fed. R. Civ. P. 9(b) and 12(b)(6), the Defendants respectfully move this Court for dismissal of the claims against them in Plaintiff's First Amended Complaint. The grounds for this motion are stated in: (1) the Memorandum in Support of Defendants' Motion to Dismiss submitted on behalf of all defendants; and (2) the individual memoranda of law filed by some defendants which address issues specific to them.

WHEREFORE, for the reasons set forth in the memoranda described above, the Defendants respectfully request that the Court grant their motion to dismiss the claims against them in the Plaintiff's First Amended Complaint and enter an order:

- a. Dismissing all claims in the First Amended Complaint with prejudice; and
- b. Providing such other relief as the Court deems just and proper.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to LR. 7.1(D), Defendants believe that oral argument may assist the Court in resolving the issues presented in this motion and respectfully request that oral argument be heard.

Respectfully submitted,

/s/ John P. Bueker

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Warrick Pharmaceuticals Corporation on behalf  
of all Defendants*

Dated: September 19, 2008

**CERTIFICATE OF COMPLIANCE WITH LR. 7.1**

I hereby certify that counsel for Schering and Warrick, acting on behalf of the Defendants, conferred with counsel for Plaintiff in a good faith effort to resolve or narrow the issues set forth herein. The parties were unable to reach agreement with respect to the issues presented.

/s/ Daniel J. Bennett  
Daniel J. Bennett

**CERTIFICATE OF SERVICE**

I hereby certify that on September 19, 2008, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Daniel J. Bennett  
Daniel J. Bennett